Office Supreme Court, U.S.
FILED
FEB 26 1964
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IN THE

Supreme Court of the United States

October Term, 1963

No. [redacted] 40

JOHN W. STANFORD, JR.,

Petitioner,

—v.—

STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

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JOHN W. STANFORD, JR.,

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STATE OF TEXAS,

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PETITION FOR A WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

John W. Stanford, Jr., prays that a writ of certiorari issue to review the judgment of the 57th Judicial District Court of Bexar County, Texas, entered in the above-entitled case on January 20, 1964.

Opinion Below

No opinion was rendered by the court below.

Jurisdiction

The judgment of the court below was entered on January 20, 1964 (T.[1] 12; Appendix A, *infra*, pp. 19-20). A timely motion for a new trial, filed on January 29, 1964 (T. 16),

[1] "T" refers to the record of the proceedings in the court below which is entitled "Transcript" on its cover.

was overruled on January 29, 1964 (T. 20). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3) because rights are claimed under the Constitution of the United States.

Questions Presented

1. Whether the seizure of petitioner's books, papers, records and letters, and the search warrant which purported to authorize the seizure, violated the Fourth and Fourteenth Amendments to the United States Constitution, because:

   a) There was no probable cause for issuance of the warrant;

   b) There was no specification of the crime charged;

   c) The things to be seized were not particularly described.

2. Whether the seizure of petitioner's books, papers, records and letters, and the search warrant which purported to authorize the seizure, violated the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, because petitioner was compelled thereby to testify against himself.

3. Whether the seizure of petitioner's books, papers, records and letters, and the search warrant which purported to authorize the seizure, violated the First and Fourteenth Amendments to the United States Constitution because petitioner was thereby deprived of freedom of speech, freedom of the press, and freedom of association.

4. Whether Articles 6889-3 and 6889-3A, Revised Civil Statutes of Texas, are superseded by federal legislation.

Constitutional Provisions and Statutes Involved

The constitutional provisions involved are Article VI, the First Amendment, the Fourth Amendment, the Fifth Amendment, and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The statutory provisions involved are Article 6889-3, entitled "The Texas Communist Control Law" (hereafter called the "Control Law"), and Article 6889-3A, entitled "An Act for the Suppression of Communist Party and Related Organizations" (hereafter referred to as the "Suppression Act"), of the Revised Civil Statutes of Texas. They are printed in Appendix B, *infra*, pp. 21-32.

Statement of the Case

On December 26, 1963, petitioner was served with a report and order of the Subversive Activities Control Board calling for his registration as a member of the Communist Party pursuant to Section 8 of the Subversive Activities Control Act of 1950, 50 U. S. C., 787. (Tr.[2] 2; App. Ex. 1). On December 27, 1963, James E. Barlow, Criminal District Attorney, Bexar County, Texas, made application (App. Ex. 12; Appendix C, *infra*, pp. 33-34) in the District Court, 57th Judicial District, Bexar County, for a search warrant "in accordance with Section 9, of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas".[3] After reciting that he had good reason to believe and did believe that petitioner's premises was "a place where books, records, pamphlets, cards, receipts, lists, memoranda, pic-

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[2] "Tr" refers to the transcript of the hearing in the court below which is entitled "Statements of facts" on its cover.

[3] Section 9 of Article 6889-3, the Control Law, does not relate to the issuance of search warrants. It therefore must be assumed that the reference is simply to Section 9 of Article 6889-3A, the Suppression Act.

tures, recordings and other written instruments [hereafter called "books, [etc.]"] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Articles 6889-3 and 6889-3A," the application of Mr. Barlow stated that his belief was founded on the following information:

> "That this officer has received information from two credible persons that the party named above has such books and records in his possession which are books and records of the Communist Party [,] including party lists and dues payments, and in addition other items listed above. That such information is of recent origin and has been confirmed by recent mailings by Stanford on the 12th December, 1963 of pro-Communist material."

The application attached an affidavit (App. Ex. 11; Appendix D, *infra*, pp. 35-36) signed by two persons, both Assistant Attorney Generals of the State of Texas. The affidavit recited that the beliefs of the affiants in the existence on petitioner's property of

> "books [etc.] concerning the Communist Party of Texas and the operations of the Communist Party in Texas . . . unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas"

were founded on the following information:

> "Recent mailings by Stanford on the 12th of December, 1963, of material from his home address, such material being identified as pro-Communist material and other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party."

The warrant (App. Ex. 13; Appendix E, *infra*, pp. 37-38), issued by Solomon Casseb, Jr., Judge, 57th Judicial District, Bexar County, after reciting that the "application [is] . . . in accordance with law," and the allegations made regarding existence of the "books [etc.] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas," and their unlawful possession and use in violation of the Control Law and Suppression Act at the petitioner's home, ordered the executing officers

> "to enter immediately and search the above described premises for such items listed above unlawfully possessed in violation of [the Control Law and the Suppression Act], and to take possession of same."

The warrant was executed on December 27, 1963, in the course of a five-hour search of petitioner's residence. About two thousand pieces of literature, books, pamphlets, and other publications, were seized. Also taken were petitioner's private papers, including correspondence with his attorney (App. Ex. 14) and with the committee supporting his defense against the charges of the Subversive Activities Control Board (App. Ex. 15), personal letters, certificate of title to his auto, his marriage certificate, and medical and furniture bills (Tr. 46-51). An inventory of all the material seized was attached to the return of the warrant (App. Ex. 13).[4]

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[4] Illustrative of the material among the fourteen boxes of books seized (Tr. 20) is the following alphabetical list of persons whose written works were a part of petitioner's library: Justice Hugo L. Black, Earl Browder, Fidel Castro, Benjamin Davis, Theodore Draper, Che Guevara, Pope John XXIII, N. S. Kruschev, V. I. Lenin, Karl Marx and Friedrich Engels, and Jean-Paul Sartre. Some of the books were from petitioner's private library and some were inventory of his book-selling business conducted under the name of "All Points of View" (Tr. 29-30; App. Ex. 6). One of the items seized and listed in the return (1 box cardboard 5" x 4" x 10" containing index cards containing addresses) contained the mailing list assembled by petitioner in his book business.

On January 9, 1964, petitioner made application before Judge Casseb for an order to "quash, set aside, and hold for naught" the warrant, and for return of all items seized under it (T. 1-7). Judge Casseb ordered a hearing regarding the search warrant (T. 8), which was had on January 17, 1964.

At the hearing, Mr. Lonny Zweiner, one of the signers of the affidavit upon which the warrant issued, upon objection by the State's Counsel, was not permitted to answer a question about what specified phase or phases of the acts had been violated, through unlawful possession or use of the seized material, or otherwise (Tr. 69-70). Mr. Zweiner continued to describe his information sources only as "credible persons" who "described" the literature for which the search was made as being "communistic literature, which follows the communist line and is designed to forward the aims and purposes of the Communist Party" (Tr. 71).

The hearing also established that Mr. V. Murray Jordon, the other affiant, and the officer who supervised the selection of the materials taken pursuant to the warrant (Tr. 66, 68), had no qualifications for determining what would be "pro-Communist" literature. Mr. Jordan was a 1959 graduate of the University of Texas Law School. He had been a finance major as an undergraduate. He had not studied communism either in college or law school (Tr. 73-75). He had simply looked at "various samples of . . . communist party literature . . . " (Tr. 77).

Mr. Jordan's unidentified informants told him they had received "communist party literature" from Mr. Stanford at a Communist Party meeting (Tr. 77), and that the distributed "material" would be the subject of discussion led by Mr. Stanford, "that discussion about an article from these pamphlets and this was stated to be the Communist

Party line or leaf (sic) of the Communist Party line" (Tr. 79). Mr. Jordon (Tr. 80-81), and Mr. Zweiner (Tr. 66-68) believed the warrant ordered only the seizure of books which were sympathetic to the Communist Party "line".

On January 20, 1964, the court below denied petitioner's application for the return of his books and papers (T. 12). On January 29, 1964 petitioner moved to set aside the judgment and to obtain a new trial regarding these matters, setting forth all the grounds which had been previously asserted as foundation for nullifying the warrant and ordering the return of the materials taken under it, and alleging the judgment was contrary to the law and the evidence (T. 16-19). On the same date the court overruled the motion (T. 20).

Under Texas law, as established in *Ex parte Wolfson*, 127 Cr. R. 277, 75 S. W. 2d 440 (Tex. Ct. of Crim. App. 1934), there is no appeal from an order entered upon a hearing before the magistrate upon return of the search warrant, or any finding by such magistrate that there was good ground for issuance of the warrant. The parties have stipulated that the judgment of the court below is final and not appealable or otherwise reviewable under Texas law (T. 14). See *Thompson* v. *City of Louisville*, 362 U. S. 199, 202-203 (1960).

The federal questions presented were raised on the Application to Determine Legality of Search Warrant (T. 1-7) and reiterated on the Motion for a New Trial (T. 16-19).

Reasons for Granting the Writ

In this singular case, the State of Texas has asserted the power to lay siege to a man's home for five hours; rummage freely through his books, records and papers;

seize and remove publications capriciously deemed to be "pro-Communist"; and seize and remove his private papers, including privileged correspondence with his attorneys—all for the purpose of discovering whether any crimes have lately been committed. The intrusion is allegedly authorized by two Texas statutes which clearly trench upon the freedoms of speech, press and association, rights which are protected against abridgement or invasion by the Constitution. As if those acts themselves were not sufficiently oppressive, the State officials, under the pretense of acting lawfully, proceeded upon the basis of a search warrant which violated every standard for the protection of privacy which this Court has enunciated, and a few not heretofore anticipated.

I.

a) The Warrant Was Issued Without Probable Cause.

The search warrant in this case was issued without probable cause, in violation of the Fourth Amendment, which applies equally to the States and the United States.[3]

> "Under the Fourth Amendment an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough." *Nathanson* v. *U. S.*, 290 U. S. 41, 47 (1933).

"Probable cause exists if the facts and circumstances . . . warrant a prudent man in believing that the offense has been committed." *Henry* v. *U. S.*, 361 U. S. 98, 102 (1959).

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[3] *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Ker* v. *California*, 374 U. S. 23 (1963).

The "facts" which the affidavit sets forth in support of the affiants' belief that petitioner had committed a crime are twofold: first, "information" of "recent mailings by Stanford" of "pro-Communist material"; and, second, "other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party."

Both of the statements are hearsay (Tr. 74). While probable cause can be established by hearsay evidence, the affidavit must show a "substantial basis for crediting the hearsay . . . presented." *Jones* v. *United States*, 362 U. S. 257, 269 (1960). There is no such showing here. The first of these two pieces of information offered in support of the affiants' beliefs depends entirely upon the efficacy of the assertion that the material mailed was "pro-Communist." It is difficult to imagine anything more conclusionary and lacking the quality of an assertion of fact sufficient to meet the standard of the Fourth Amendment. If one untangles these words, the affidavit, in attempting to present facts and circumstances, says that the affiants have been told by completely unidentified and perhaps completely untrustworthy sources that petitioner, more than two weeks before the issuance of the warrant, had mailed materials which these sources "identified as pro-Communist." The second "fact or circumstance," somewhat more clearly perhaps, shows that sources of no greater established trustworthiness had told the affiants that petitioner had in his possession books and records of the Texas Communist Party.[6]

When one considers the dearth of factual allegations, as opposed to conclusions, and the absence of qualifications of the affiants, as established at the hearing, it is doubtful

[6] Cf. *Johnson* v. *United States*, 333 U. S. 10 (1948); *Jones* v. *United States*, *supra*.

if the statements in support of their beliefs would have been sufficient to establish probable cause, even if made on personal knowledge. But having its origin in unidentified and unqualified persons, the basis for the issuance of the warrant resembles but a caricature of an insufficient showing of probable cause. Cf. *Wong Sun* v. *United States*, 371 U. S. 471, 481-82 (1963); *Abel* v. *United States*, 362 U. S. 217, 246 (1960) (dissenting opinion).

b) The Warrant Did Not Specify the Crime Charged.

A search warrant cannot be issued unless the applicant indicates that some *specific* crime has probably been committed by the party who is to be subjected to an invasion of privacy and liberty. Thus far, normal procedures for the issuance of such a warrant have obviated the necessity for this Court explicitly to announce this. It is, however, implicit in many decisions of this and other courts in relating probable cause to the showing of the likelihood that "*the* offense has been committed." *Carroll* v. *United States*, 267 U. S. 132, 161 (1925); *Dumbra* v. *United States*, 268 U. S. 435, 439 (1925); *Henry* v. *United States*, 361 U. S. 98, 102 (1959).

The Suppression Act makes all of the following illegal: commission of an act intended to overthrow [etc.] the United States or Texas; advocacy or teaching such doctrine; conspiracy to commit such acts or teach such doctrines; support of or membership in any organization which engages in or advocates such acts. Consistent with the terms of the statute (assuming, *arguendo*, its constitutionality) a warrant might issue under Section 9 for search and seizure to prove any of these crimes. But these crimes are each quite separate, and the application and order must indicate the offense which has probably been committed. Section 9 so required. The application and warrant, how-

ever, failed to specify the violation. But it did not stop there. It sought not only to authorize search for and seizure of evidence of this cluster of crimes, but for other purposes as well: perhaps to prove the crime of failing to register as a Communist, perhaps to enforce the other sanctions of the Control Law (prohibition of candidacy for office, or termination of state employment).

While such clustering of the crimes for which evidence is being sought is unconstitutional even if each of the crimes for which the evidence is being gathered is a properly defined crime capable of withstanding constitutional challenge, when, as here, the provisions of the statute clearly trench upon constitutionally protected activity, this bundling of statutes for which evidence regarding violations is being sought becomes all the more objectionable.

c) The Warrant Did Not Particularly Describe the Things to Be Seized.'

The Fourth Amendment requires that search warrants shall particularly describe the things to be seized.

> "[This] requirement . . . prevents the seizure of one thing under a warrant describing another. As to what is to be taken, *nothing is left to the discretion of the officer executing the warrant.*" *Marron v. United States*, 275 U. S. 192, 196 (1927). (Emphasis added.)

Measuring the warrant here by the express language of the Amendment and this expression of the policy behind that requirement establishes its deficiencies. The warrant ordered seizure of "books, [etc.] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas [which] are unlawfully possessed and used in violation of [the Control Law and the Suppression Act]."

In *Marcus* v. *Property Search Warrant*, 367 U. S. 717 (1961), this Court reversed an order denying a motion to quash search warrants which described the materials to be seized only in the language of the statute and which thus permitted those executing the warrants to exercise individual judgment about what violated the statute. This Court said that, "Procedures which sweep so broadly and with so little discrimination are obviously deficient in techniques required by the Due Process Clause of the Fourteenth Amendment to prevent erosion of the constitutional guarantees." Id. at 733.

The officials here wielded a general search warrant which invested them with carte blanche to seize whatever took their fancy. But, as Mr. Justice Brennan pointed out in *Marcus* v. *Property Search Warrant*, *supra*, at 729:

> "The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression."

II.

The warrant here was issued under Section 9 on the Suppression Act, which provides for the seizure of "books, [etc.] *showing* that a person or organization is violating or has violated any of the provisions of this Act." (Emphasis added.) The provision is unconstitutional on its face, for it authorized issuance of the warrant for a purpose prohibited by the Fourth and Fifth Amendments.

A search warrant cannot be used solely to gather evidence. "In this regard the Fourth and Fifth Amendments run almost into each other." *Boyd* v. *United States*, 116 U. S. 616, 630 (1886); *Gouled* v. *United States*, 255 U. S.

298 (1921). Papers and documents which afford evidence that a felony has been committed, but which are not the means of committing it, are immune from seizure. *United States* v. *Lefkowitz*, 285 U. S. 452 (1932).[7]

The pernicious terms of Section 9 of the Texas statute, authorizing search and seizure of materials *showing* that a person or organization is violating or has violated any provision of the Act, become the more wicked when the material which it authorizes to be seized includes publications. While State officials may long for the power to seize books that have not lost the protection of the First Amendment the Constitution forbids it, for if their possession is not unlawful, that is, if they are neither contraband, nor the fruits or implements of crime, they cannot be more than evidence of crime. Though there are nations where possession or sale of publications unpalatable to the government is deemed criminal, the United States is not one of them, nor was Texas until this case arose.

III.

There is no dearth of authority for the proposition that States may not make political opinion illegal, however unpopular those opinions may be. *DeJonge* v. *Oregon*, 299 U. S. 353 (1937), is perhaps the most appropriate case in point.[8] Publications, the most commonly used means of

[7] See 129 A. L. R. 1296 (1940).

[8] See too *Abrams* v. *United States*, 250 U. S. 616 (1919) (dissenting opinion); *Whitney* v. *California*, 274 U. S. 357 (1927) (concurring opinion); *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Herndon* v. *Lowry*, 301 U. S. 242 (1937); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Hague* v. *CIO*, 307 U. S. 496 (1939); *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *West Va. Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943); *Thomas* v. *Collins*, 323 U. S. 516 (1945);

exercising the right of free speech, cannot be made the subject of official sanction unless, by reason of the nature of the books themselves, the possession, giving, selling or issuing of them would be a crime. Only then would such publications lose the protection of the First Amendment and be properly seizable. "Obscene" books are the only such class of publications. *Roth* v. *United States*, 354 U. S. 476 (1957).

This Court has condemned as inadequate procedures affording the owner of "obscene" books more protection than petitioner had here. *Marcus* v. *Property Search Warrant*, 367 U. S. 717 (1961), declared that if publications are to be seized, the State, because of the nexus between books and the exercise of free speech, must provide a method having greater safeguards for individual liberty than might be required if the seizure were of arms, ammunition, gambling paraphernalia, or equipment for looting. As was stated in *Speiser* v. *Randall*, 357 U. S. 513 (1958), "The more important the rights at stake the more important must be procedural safeguards surrounding those rights . . . When the State undertakes to restrain unlawful advocacy it must provide procedures which are adequate to safeguard against infringement of constitutionally protected rights—rights which we value most highly and which are essential to the working of a free society." At 520-521. See also *Smith* v. *California*, 361 U. S. 147 (1959).

Terminiello v. *Chicago*, 337 U. S. 1 (1949); *Talley* v. *California*, 362 U. S. 60 (1960); *Shelton* v. *Tucker*, 364 U. S. 479 (1960); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U. S. 293 (1961); *Cramp* v. *Bd. of Public Instruction*, 368 U. S. 278 (1961); *NAACP* v. *Button*, 371 U. S. 415 (1963); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Gibson* v. *Florida Legislative Comm.*, 372 U. S. 539 (1963); *Wright* v. *Georgia*, 373 U. S. 284 (1963).

The seizure here, and the statutes under which it was performed, also violate the proscription upon State activity imposed by the Fourteenth Amendment in protection of the First Amendment right to freedom of association. *NAACP* v. *Alabama*, 357 U. S. 449 (1958). Among the items taken by the Texas officials were the mailing lists that petitioner used in his book business. This extraction from petitioner, without his consent, of the names of those to whom petitioner seeks to sell books, concerns information regarding lawful conduct which the State may not extract through this procedure. Even in *Uphaus* v. *Wyman*, 360 U. S. 72 (1959), in which a majority of this Court, in a unique decision, permitted a State to extract by lawful procedures information regarding associations in and of themselves completely lawful, it was explicitly stated that such power rested in the State because a statute required the maintenance of records, available to public inspection, which contained the information sought. In the instant case, the State does not (and, we trust, could not) require the records and lists which were taken from defendant to be maintained. Further, in the *Uphaus* case, the majority opinion suggests that the investigative power of the State legislature is broader than the power of the State in criminal proceedings.

This seizure affects others than just petitioner. The fact that Texas takes no direct action against the others does not end inquiry into the effect of the seizure of the mailing lists of this book distributor. *NAACP* v. *Alabama*, *supra*.

> "Once the Government can demand of a publisher the names of the purchasers of his publication the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow. Fear of

> criticism goes with every person into the bookstall. The subtle, imponderable pressures of the orthodox lay hold. Some will fear to read what is unpopular, what the powers-that-be dislike. When the light of publicity may reach any student, any teacher, inquiry will be discouraged. The books and pamphlets that are critical of the administration, that preach an unpopular policy in domestic or foreign affairs, that are in dispute in the orthodox school of thought will be suspect and subject to investigation. The press and its readers will pay a heavy price in harassment. But that will be minor in comparison with the menace of the shadow which government will cast over literature that does not follow the dominant party line." *United States* v. *Rumely*, 345 U. S. 41, 57-58 (1953) (concurring opinion).

IV.

In *Pennsylvania* v. *Nelson*, 350 U. S. 497 (1956), this Court held that state criminal statutes directed against sedition had been pre-empted under Art. VI of the Constitution by the Smith Act, 18 U. S. C. §2385. Subsequently, *Uphaus* v. *Wyman*, 360 U. S. 72 (1959), held that the States were not debarred from investigating in the area of sedition solely against a state—the precise factual question before the Court. As a result of the two decisions, there is considerable doubt whether state statutes which sweep as broadly as the Control Law and the Suppression Act can stand consistently with the Supremacy Clause, in the light particularly of the Smith Act, the Subversive Activities Control Act of 1950, 50 U. S. C. §781 et seq., and the Communist Control Act of 1954, 50 U. S. C. §841 et seq.

Nelson articulated a threefold test of supersession: (1) whether the scheme of federal regulation is so pervasive

that it can reasonably be inferred that Congress left no room for the states to legislate. 350 U. S. at 502; (2) whether the state statutes concern a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. 350 U. S. at 504; (3) whether enforcement of the state laws presented a serious danger of conflict with the administration of the federal program. 350 U. S. at 505. These three criteria set against the statutes here and the pending Subversive Activities Control Board proceedings against petitioner, compel the conclusion that the Texas laws have been superseded.

CONCLUSION

For the reasons set forth above, the petition should be granted.

Respectfully submitted,

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February 26, 1964

APPENDIX A

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

IN RE: JOHN WILLIAM STANFORD, JR.
SEARCH WARRANT

JUDGMENT

On the 17th day of January, 1964, came on to be heard the Application of the Petitioner, John W. Stanford, Jr., to Determine the Legality of the Search Warrant issued in this cause, and the Petitioner appeared in person and by and through an Attorney representing the American Civil Liberties Union and the State appeared by and through the Criminal District Attorney of Bexar County, Texas, and the representatives of the Attorney General of Texas, and the Court having considered the pleadings and the evidence in the cause, and this Court sitting as a magistrate, as it has jurisdiction to do so under Title 6 of the Code of Criminal Procedure of Texas,

DENIES the relief prayed for by the Petitioner herein. Costs are taxed to Petitioner.

Signed this the 20th day of January, 1964.

SOLOMON CASSEB
District Judge
57th Judicial District of
Bexar County, Texas

JAMES E. BARLOW
Criminal District Attorney
Bexar County, Texas

Approved as to form only:

MAURY MAVERICK, JR.
Attorney for
American Civil Liberties Union

APPENDIX B

COMMUNISM

ART. 6889-3. TEXAS COMMUNIST CONTROL LAW

Communist defined

Section 1. A "Communist" is a person who:

(A) Is a member of the Communist Party, notwithstanding the fact that he may not pay dues to, or hold a card in, said Party; or

(B) Knowingly contributes funds or any character of property to the Communist Party; or

(C) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them, by force or violence; or

(D) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States, the Government of the State of Texas, or the government of any political subdivision of either of them, by unlawful or unconstitutional means, and the substitution of a Communist government or a government intended to be substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites.

Definition of Communist Party

Sec. 2. The "Communist Party" is any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which

in any manner advocates, or acts to further, the world Communist movement.

Definition of Communist Front Organization

Sec. 3. A "Communist Front Organization" is any organization the members of which are not all Communists, but which is substantially directed, dominated or controlled by Communists or by the Communist Party, or which in any manner advocates, or acts to further, the world Communist movement.

Registration

Sec. 4. (A) Each person remaining in this State for as many as five (5) consecutive days after the effective date of this Statute, who is a Communist or is knowingly a member of a Communist Front Organization, shall register with the Department of Public Safety of the State of Texas on or before the fifth consecutive day that such person remains in this State, and so long as he remains in this State shall reregister annually with said Department between the first and fifteenth days of January.

(B) Such registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the State of Texas, sources of income, place of birth, places of former residence, and features of identification, including fingerprints, of the registrant; organizations of which registrant is a member; names of persons known by registrant to be Communists or members of any Communist Front Organization; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute.

(C) Each and every officer of the Communist Party and each and every officer of Communist Front Organizations,

knowing said Organizations to be Communist Front Organizations, shall register or cause to be registered said Party or Organizations with the Department of Public Safety, if said Party or Organizations have any members who reside, permanently or for a period of time more than thirty (30) days, in the State of Texas. Such registration shall be under oath and shall include the name of the organization, the location of its principal office and of its offices and meeting places in the State of Texas; the names, real and assumed, of its officers; the names, real and assumed, of its members in the State of Texas and of any person who has attended its meetings in the State of Texas; a financial statement reflecting receipts and disbursements and by whom and to whom paid; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute. Such registration shall be made within thirty (30) days after the effective date of this Statute, and thereafter at such intervals as are directed by the Department of Public Safety.

(D) Failure to register as herein required, or the making of any registration which contains any material false statement or omission, shall constitute a felony and shall be punishable by a fine of not less than One Thousand Dollars ($1,000) or more than Ten Thousand Dollars ($10,000), or by imprisonment of not less than two (2) or more than ten (10) years, or by both.

(E) Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the records shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this State, of the United States or of any State or Territory of the United States. At the discretion of the Department of Public Safety, such records may also be open for inspection by the general public or by any member thereof.

Sabotage

Sec. 5. It shall be a felony, punishable by a term in the penitentiary of not less than two (2) nor more than twenty (20) years for any person, with the intent to injure the United States, the State of Texas, or any facilities or property used for national defense, to sabotage or destroy, or to attempt to sabotage or destroy, any property, facility or service that is being used or is to be used in connection with national defense. Should any loss of life occur by reason of such sabotage or destruction, or by reason of any attempted sabotage or destruction of such character, the person committing or attempting to commit same shall be guilty of murder with malice aforethought and shall be punished by death, or by confinement in the penitentiary for life or for any term of years not less than two (2). The word "sabotage" as used herein means the wilful and malicious infliction of physical damage or injury to property. The penalty herein provided shall be cumulative of all other penalties which might be imposed by virtue of the fact that the acts constituting an offense under this Statute also constitute separate offenses under other laws of this State.

Elections

Sec. 6. The name of any Communist or of any nominee of the Communist Party shall not be printed upon any ballot used in any primary or general election in this State or in any political subdivision thereof.

Public office

Sec. 7. No person may hold any nonelective position, job or office for the State of Texas, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the State of Texas, or of any political subdivision there-

of, where reasonable grounds exist, on all of the evidence, for the employer or other superior of such person to believe that such person is a Communist or a knowing member of a Communist Front Organization.

Enforcement

Sec. 8. The Attorney General of the State of Texas, all District and County Attorneys, the Department of Public Safety, and all law enforcement officers of this State shall each be charged with the duty of enforcing the provisions of this Statute.

Partial unconstitutionality

Sec. 9. If any section, subparagraph, sentence, phrase, part or application of this Statute shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions hereof, and the Legislature here declares that it would have enacted such remaining portions notwithstanding any holding of unconstitutionality with respect to any other portions of this Statute.

Cumulative character

Sec. 10. This Statute is cumulative of all existing laws and does not repeal any such laws.

Short title

Sec. 11. This Act may be cited as the "Texas Communist Control Law." Acts 1951, 52nd Leg., p. 10, ch. 8.

Historical Note

The Act contained the following preamble: "There exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control. Such world control

is to be brought about by aggression, force and violence, such as is now occurring in the Republic of Korea, and is to be accomplished in large part by infiltrating tactics involving the use of fraud, espionage, sabotage, terrorism and treachery. Since the State of Texas is the location of many of the Nation's largest and most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Texas is a most probable target for those who seek by force and violence to overthrow Constitutional Government, and is in imminent danger of Communist espionage and sabotage. Communist control of a country is characterized by an absolute denial of the right of self-government and by the abolition of those personal liberties which are cherished and held sacred in the State of Texas and in the United States of America. The world Communist movement, temporarily halted by American dead, constitutes a clear and present danger to the citizens of the State of Texas. Therefore,"

ART. 6889-3A. SUPPRESSION OF COMMUNIST PARTY AND RELATED ORGANIZATIONS

Legislative finding and declaration

Section 1. Upon evidence and proof already presented before this Legislature, Congress, the courts of this State, and the courts of the United States, it is here now found and declared to be a fact that there exists an international Communist conspiracy which is committed to the overthrow of the government of the United States and of the several States, including that of the State of Texas, by force or violence, such conspiracy including the Communist Party of the United States, its component or related parts and members, and that such conspiracy constitutes a clear and present danger to the government of the United States and of this State.

Illegality of Communist Party and component or related organizations; dissolution; forfeiture of charter; property, etc.

Sec. 2. The Communist Party of the United States, together with its component or related parts and organizations, no matter under what name known, and all other organizations, incorporated or unincorporated, which engage in or advocate, abet, advise, or teach, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, are hereby declared to be illegal and not entitled to any rights, privileges, or immunities attendant upon bodies under the jurisdiction of the State of Texas or any political subdivision thereof. It shall be unlawful for such Party or any of its component or related parts or organizations, or any such other organization, to exist, function, or operate in the State of Texas. Any organization which is found by a court of competent jurisdiction to have violated any provisions of this Section, in a proceeding brought for that purpose by the District Attorney, Criminal District Attorney, or County Attorney, shall be dissolved, and if it be a corporation organized and existing under the laws of this State or having a permit to do business in this State, its charter or permit shall be forfeited, and, whether incorporated or unincorporated, all funds, records, and other property belonging to such Party or any component or related part or organization thereof, or to any such other organization, shall be seized by and forfeited to the State of Texas, to escheat to the State as in the case of a person dying without heirs. All books, records, and files of any such organization shall be turned over to the Attorney General.

Registration not evidence

Sec. 3. The fact of the registration of any person under the provisions of Article 6889-3 of the Revised Civil Statutes of Texas as an officer or member of any Communist organization shall not be received in evidence against such person in any proceeding for any alleged violation of this Act.

Prima facie evidence

Sec. 4. As to any particular organization, proof of its affiliation with a parent or superior organization, inside or outside of this State, which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, shall constitute prima facie evidence that such particular organization engages in or advocates, abets, advises, or teaches, or has as a purpose the engaging in or advocating, abetting, advising, or teaching of, the same activities with the same intent.

Unlawful acts

Sec. 5. It shall be unlawful for any person knowingly or willfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances to constitute a clear and present danger to the security of the United States, or of the State of Texas, or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any of the above acts; or

(4) Assist in the formation of, or participate in the management of, or contribute to the support of, or become or remain a member of, or destroy any books or records or files of, or secrete any funds in this State of the Communist Party of the United States or any component or related part or organization thereof, or any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, knowing the nature of such organization.

Punishment for violations

Sec. 6. Any person who shall violate any of the provisions of Section 5 of this Act shall be guilty of a felony, and upon conviction thereof shall be fined not more than Twenty Thousand ($20,000.00) Dollars, or imprisoned not less than one (1) year nor more than twenty (20) years in the State penitentiary, or may be both so fined and imprisoned. Provided that nothing in this Act shall be construed to repeal any part of Articles 83, 84, and 85 of the Penal Code of the State of Texas, relating to treason, nor any part of Articles 153 and 155 of the Penal Code of the

State of Texas, relating to seditious writings and language; and provided further, that no person convicted of any violation of this Act shall ever be entitled to suspension or probation of sentence by the trial court.

Disqualification to hold office, etc.

Sec. 7. Any person who shall be convicted finally by a court of competent jurisdiction of violating any of the provisions of this Act shall from the date of such final conviction automatically be disqualified and barred from holding any office, elective or appointive, or any other position of profit, trust, or employment with the government of the State of Texas or any agency thereof, or of any county, municipal corporation, or other political subdivision of the State.

Injunctions

Sec. 8. The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon the application of the State of Texas, acting through the District Attorney, Criminal District Attorney, or County Attorney, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act; no injunction or other writ shall be granted, used or relied upon under the provisions of this Act in any labor dispute or disputes. Such proceedings shall be instituted, prosecuted, tried, and heard as other civil proceedings of like nature in such courts, provided that such proceedings shall have priority over other cases in settings for hearing; provided further, that no such proceeding shall be instituted unless and until the Director of the Texas State Department of Public Safety or his assistant in charge has been notified by telephone, telegraph, or in person of the intention to institute such

proceeding, and an affidavit of such notice filed with the application for such injunction proceedings shall be sufficient for the filing of the same.

Nothing in this Act shall be construed to alter in any way the powers now held by the courts of this State or of this nation under the laws of this State in labor disputes.

Search warrants

Sec. 9. A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be accompanied by the affidavits of two credible citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence

obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial, save and except those arising under this Act.

Enforcement of law

Sec. 9a. The Internal Security Section of the Texas Department of Public Safety shall assist in the enforcement of the provisions of this Act, and for such purpose said Department may employ and pay the salaries and wages of such personnel and make such capital outlay purchases as it may deem necessary and pay necessary expenses, including but not limited to travel expenses (including automobile maintenance), all necessary operating expenses (including seasonal help), wages and salaries of employees, and make any and all other expenditures whatsoever necessary for the proper enforcement of the provisions of this Act; and for such purposes there is hereby appropriated out of the Operators and Chauffeurs License Fund such money as may be necessary, not to exceed the sum of Seventy-five Thousand ($75,000.00) Dollars for the biennium ending August 31, 1955. Acts 1954, 53rd Leg., 1st C.S., p. 9, ch. 3.

APPENDIX C

No. .....

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF BEXAR

APPLICATION FOR SEARCH WARRANT

To the Honorable Judge of Said Court:

Now comes the Criminal District Attorney of Bexar County, Texas, and makes this application for a search warrant in accordance with Section 9, of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas, and in support of the same would show the Court as follows:

1. That he has good reason to believe and does believe that a certain place and premises in Bexar County, Texas, described as two white frame houses and one garage, located at the address of 1118 West Rosewood, in the City of San Antonio, Bexar County, Texas, and being the premises under the control and in charge of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Articles 6889-3 and 6889-3A, Revised Civil Statutes of the State of Texas, and that such belief of this officer is founded upon the following information:

That this officer has received information from two credible persons that the party named above has such

books and records in his possession which are books and records of the Communist Party including party lists and dues payments, and in addition other items listed above. That such information is of recent origin and has been confirmed by recent mailings by Stanford on the 12th of December, 1963 of pro-Communist material.

2. That this application for a search warrant has attached hereto the affidavit from two credible persons as to the information received.

WHEREFORE, PREMISES CONSIDERED the State of Texas asks that a search warrant issue to search the above described premises for the above described list of items set out above, and that such search warrant be directed as required by law.

Respectfully submitted,

JAMES E. BARLOW
Criminal District Attorney

SUBSCRIBED AND SWORN to before me this 27th day of December, 1963, to certify which witness my hand and seal of office.

.....
Notary Public in and for
Bexar County, Texas

APPENDIX D

AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared V. MURRAY JORDAN and LONNY F. ZWIENER, who being by me duly sworn, upon oath, depose and say:

That they have good reason to believe and do believe that a certain place and premises in Bexar County, Texas described as two white frame houses and one garage located at the address of 1118 West Rosewood, in the City of San Antonio, Bexar County, Texas, and being the premises under the control and in charge of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas and the operations of the Communist Party in Texas, are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas.

Such belief is based upon the following information: Recent mailings by Stanford on the 12th of December, 1963, of material from his home address, such material being identified as pro-Communist material and other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party.

.....

.....

SUBSCRIBED AND SWORN to before me this 27th day of December, 1963, to certify which witness my hand and seal of office.

TOM LEE
Notary Public in and for
Bexar County, Texas

APPENDIX E

Warrant

The State of Texas
County of Bexar

To the Sheriff or any other Officer of Bexar County,

Greetings:

Whereas, an application of the Criminal District Attorney accompanied by affidavits of two credible persons made on oath and in writing, in accordance with law, has this day been made before me alleging that the premises described as two white frame houses and one garage located at the address of 1118 West Rosewood in the City of San Antonio, Bexar County, Texas, and being the premises under the control of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas.

You are therefore hereby commanded to enter immediately and search the above described premises for such items listed above unlawfully possessed in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes, State of Texas, and to take possession of same.

HEREIN FAIL NOT, but have you then and there this warrant within three days from date of its issuance with your return thereon, showing how you have executed the same.

WITNESS my hand this the 27th day of December A.D. 1963.

SOLOMON CASSEB
Judge, 57th Judicial District,
Bexar County, Texas